

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

RICKY DAVIS

PLAINTIFF

V.

CIVIL ACTION NO.4:04CV381-GHD-JAD

DONALD CABANA, ET AL

DEFENDANTS

REPORT AND RECOMMENDATION

On October 6, 2005, plaintiff, an inmate of the Mississippi Department of Corrections, appeared before the court for a hearing pursuant to *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985) to determine if there exists a justiciable basis for his claim filed pursuant to 42 U.S.C. §1983.

Plaintiff was housed in Unit 32 at Parchman in August, 2004 when there was an altercation between another inmate and an officer. The officer was injured in the incident. Defendant Cabana ordered a shakedown to locate any weapons or contraband. Defendant Lee supervised the shakedown. Davis' mattress, stamps, toiletries, state issued clothing and legal documents were confiscated. He claims this conduct violates his constitutional rights including access to the court, but admitted at the hearing that he had replaced the papers with copies his sister had and that he missed no court deadlines as a result of the confiscation. Given the obvious security concerns underlying the order, Davis' complaint does not state a violation of constitutional magnitude.

Accordingly it is recommended that the complaint be dismissed with prejudice.

The parties are referred to 28 U.S.C. 636(b)(1) and Local Rule 72.2(D) for the appropriate procedure in the event any party desires to file objections to these findings and recommendations. Objections are required to be in writing and must be filed within ten days of this date. Failure to file written objections to the proposed finding and recommendations contained in this report within ten

days from the date of filing will bar an aggrieved party from challenging on appeal both the proposed factual findings and the proposed legal conclusions accepted by the district court *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

Plaintiff is directed to acknowledge receipt of this report and recommendation by signing the enclosed acknowledgment form and returning it to the court within ten days of this date. Plaintiff is warned that failure to comply with the requirements of this paragraph may lead to the dismissal of this lawsuit under F.R.Civ.P. 41(b) for failure to prosecute and for failure to comply with an order of the court.

This the 7th day of October, 2005.